

ENTERED

February 18, 2022

Nathan Ochsner, Clerk

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

BRAZOS ELECTRIC POWER
COOPERATIVE, INC.,

Debtor.¹

Chapter 11

Case No. 21-30725 (DRJ)

BRAZOS ELECTRIC POWER
COOPERATIVE, INC.,

Plaintiff,

v.

507 CAPITAL LLC; 507 SUMMIT LLC;
CETUS CAPITAL VI, L.P.; CHASE
LINCOLN FIRST COMMERCIAL
CORPORATION; CITIGROUP FINANCIAL
PRODUCTS INC.; CROSSINGBRIDGE
LOW DURATION HIGH YIELD FUND;
DESTINATIONS GLOBAL FIXED
INCOME OPPORTUNITIES FUND;
DESTINATIONS LOW DURATION FIXED
INCOME FUND; KOCH ENERGY
SERVICES LLC; LEAFFILTER NORTH
HOLDINGS, INC.; NJR ENERGY
SERVICES CO.; OFM II, LP; OU 2 LLC;
RIVERPARK SHORT TERM HIGH YIELD;
RIVERPARK STRATEGIC INCOME FUND;
TOTAL GAS & POWER NORTH
AMERICA, INC.; AND TWO SEAS
GLOBAL (MASTER) FUND LP,

Defendants.

Adv. Proc. No. 21-04407 (DRJ)

**STIPULATION AND AGREED ORDER
AUTHORIZING INTERVENTION**

(Docket No. 50)

¹ The Debtor in this chapter 11 case, along with the last four digits of its federal tax identification number is: Brazos Electric Power Cooperative, Inc. (4729). Additional information regarding this case may be obtained on the website of the Debtor's claims and noticing agent at <http://cases.stretto.com/Brazos>. The Debtor's address is 7616 Bagby Avenue, Waco, TX 76712.

WHEREAS, on March 1, 2021, Brazos Electric Power Cooperative, Inc. (the “Debtor”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) and the Debtor has continued in possession of its property and has continued to operate and manage its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, on May 5, 2021, the Court entered the *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(B)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form of and Manner for Filing Proofs Of Claim, Including Section 503(B)(9) Requests, (IV) Approving Notice of Bar Dates, and (V) Granting Related Relief* [Dkt. No. 515] establishing various deadlines for the filing of proofs of claim in the Chapter 11 Case, including (a) the “General Claims Bar Date” of June 15, 2021 and (b) the “Governmental Bar Date” of September 3, 2021;

WHEREAS, on November 22, 2021, the Debtor filed its *Complaint for Declaratory Relief and Asserting Omnibus Objections to Proofs of Claim Related to Natural Gas Sales to the Debtor* [Adv. Dkt. No. 1] (the “Complaint”)² with the Court against 507 Capital LLC (216); 507 Summit LLC (106); Cetus Capital VI, L.P. (113, 110, 214); Chase Lincoln First Commercial Corporation (335); Citigroup Financial Products Inc. (385); CrossingBridge Low Duration High Yield Fund (115, 207); Destinations Global Fixed Income Opportunities Fund (213); Destinations Low Duration Fixed Income Fund (114, 208); Koch Energy Services LLC (319); Leaffilter North Holdings, Inc. (110, 210); NJR Energy Services Company (167); OFM II, LP (108, 110, 114, 115, 215); OU 2 LLC (211); RiverPark Short Term High Yield (113, 206); RiverPark Strategic Income

² Capitalized terms used in this Stipulation and Agreed Order but not defined herein shall have the meanings ascribed to such terms in the Complaint.

Fund (212); Total Gas & Power North America, Inc. (350); and Two Seas Global (Master) Fund LP (106) (collectively the “Gas Claimants”)³ to commence the above-captioned adversary proceeding (the “Adversary Proceeding”);

WHEREAS, the Official Committee of Unsecured Creditors (the “Committee”) seeks to intervene in the Adversary Proceeding as an intervenor-plaintiff pursuant to Rule 7024 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”); and

WHEREAS, in order to avoid the cost, expense and inherent delay that would be incurred by the Debtor’s estate in connection with the Committee’s filing an intervention motion in the Adversary Proceeding, the Debtor, the Committee, and the Gas Claimants (collectively, the “Parties”) have agreed to a consensual intervention in the Adversary Proceeding on the terms set forth in this stipulation and agreed order (the “Stipulation and Agreed Order”).

NOW, THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND ORDERED:

1. The Committee shall be, and hereby is, permitted to intervene in the Adversary Proceeding as an intervenor-plaintiff under Bankruptcy Rule 7024 without the need for the filing of a motion, and shall be deemed to have joined in the pending Complaint; *provided, however*, that the statements made in paragraphs 27 through 30, paragraphs 64 and 65, and the first sentence of paragraph 66 of the Complaint shall not be deemed an admission by the Committee.

2. The Committee’s standing as an intervenor-plaintiff is limited to the defenses asserted in the Complaint and to any subsequent defenses the Debtor asserts against the Gas Claimants in this adversary proceeding, unless additional standing is subsequently granted to the

³ Numbers in parentheses denote the claim numbers in the Debtor’s official Claims Register.

Committee by Court order. The Debtor and the Gas Claimants reserve the right to oppose any request for additional standing by the Committee.

3. The Debtor and the Committee shall make reasonable efforts to consult each other in connection with discovery matters to minimize any duplication of effort.

4. The Committee's participation in this Adversary Proceeding shall be subject in all respects to the following terms and conditions:

- a. ***Depositions.*** The Committee shall not have the right to notice depositions unless (i) otherwise agreed to by the Debtor and the Gas Claimants (together, the "Existing Parties"), or (ii) ordered by the Court upon a motion and an opportunity to be heard (which the Existing Parties agree may be heard on an expedited basis). Before requesting permission from the Court to notice any such depositions, the Committee shall make reasonable efforts to consult with the Debtor and shall not seek to notice any depositions that the Debtor agrees to notice. The Debtor shall make reasonable efforts to confer with the Committee about the depositions that the Debtor intends to notice. The Committee may attend any deposition taken in the Adversary Proceeding and shall have the right to examine witnesses at such deposition.
- b. ***Right to Propound Discovery.*** The Committee shall not have the right to propound document requests, interrogatories, requests for admission, or any other discovery request (collectively, "Written Discovery Requests") unless (i) otherwise agreed to by the Existing Parties and the Committee, or (ii) ordered by the Court upon a motion and an opportunity to be heard (which the Existing Parties agree may be heard on an expedited basis). Before requesting permission to propound any Written Discovery Requests, the Committee shall make reasonable efforts to consult with the Debtor and shall not propound any Written Discovery Requests that are substantially similar to any Written Discovery Requests that the Debtor has propounded or agrees to propound. The Debtor shall make reasonable efforts to confer with the Committee about the Written Discovery Requests that it intends to propound.
- c. ***Right to File Dispositive Motions and Briefs.*** Only the Existing Parties shall have the right to file dispositive motions (each, a "Case Dispositive Motion") unless ordered by the Court upon a motion and an opportunity to be heard (which the Existing Parties agree may be heard on an expedited basis); *provided, however*, that notwithstanding the foregoing, in connection with any and all matters and controversies in the Adversary Proceeding, the Committee shall have the right to (x) submit briefs, including with respect to Case Dispositive Motions to the fullest extent permissible under the Bankruptcy Rules, and (y) submit joinders and other non-case dispositive pleadings (the foregoing, together with

any motions or pleadings authorized pursuant to this paragraph 4, the “Committee Pleadings”).

- d. ***Right to Argue and Examine Witnesses at Hearings or Trial.*** The Committee shall have the right to (i) be heard at any hearing and at trial on any issue, and (ii) examine witnesses at any such hearings or at trial.
- e. ***Right to Appeal.***
 - i. Adjudication on the Merits. If the Adversary Proceeding proceeds to trial and the Court adjudicates the Gas Claimants’ claims on the merits, the Committee shall not have the right to appeal such adjudication of the Gas Claimants’ claims on the merits unless ordered by the Court upon a motion, which the Existing Parties agree not to object to an expedited request to hear such a motion, and an opportunity to be heard; *provided, however,* that the Committee may join in any appeal by the Debtor.
 - ii. Consensual Resolution of the Gas Claimants’ Claims. If the Adversary Proceeding is otherwise resolved with one or more of the Gas Claimants, including through a proposed settlement (a “Consensual Resolution”), the rights of the Committee to object to, and take appeal from, any such Consensual Resolution, is expressly preserved.

5. This Stipulation and Agreed Order is immediately effective upon entry by the Court.

6. Neither this Stipulation and Agreed Order nor any of its terms may be modified, altered, amended or waived, except in writing signed by the Parties hereto and approved by the Court.

7. Unless specifically stated in this Stipulation and Agreed Order, nothing herein shall be construed as a waiver of, or stipulation with respect to, any provisions of the Federal Rules of Civil Procedure, as incorporated by the Federal Rules of Bankruptcy Procedure.

8. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Stipulation and Agreed Order, and the Parties hereby consent to such

jurisdiction to resolve any dispute or controversies arising from or related to this Stipulation and Agreed Order.

IT IS SO ORDERED.

Signed: February 18, 2022.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

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